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TELEPHONE: 504-830-4646
TELEFAX 504-830-4659
OUR FILE NO.

HARDY AND CAREY
ATTORNEYS AT LAW
111 VETERANS BOULEVARD
METAIRIE, LOUISIANA 70005

ASHTON R. HARDY
BRADFORD D. CAREY
MARJORIE R. ESMAN

November 3, 1992

573-025

HAND DELIVERED

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Southern Starr Broadcasting Group, Inc.
MM Docket No. 92-159

Reply Comments of Southern Starr Broadcasting Group, Inc.

Dear Ms. Searcy:

Transmitted herewith is an original and fourteen (14) copies of Reply Comments of Southern Starr Broadcasting Group, Inc. which we submit for filing in the above-referenced case.

Should the Commission have any questions, kindly direct them to the undersigned or Ashton R. Hardy of this office.

Sincerely,


Bradford D. Carey

BDC/bgc
Enclosures

cc: Robert Long, w/encl.
Stephen McNamara, w/encl/
Manuel Rodriguez, w/encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's Rules
To Permit FM Channel and Class
Modifications by Application

MM Docket No.
92-159

To: The Commission

**REPLY COMMENTS OF
SOUTHERN STARR BROADCASTING GROUP, INC.**

Southern Starr Broadcasting Group, Inc. (hereinafter sometimes referred to as "SSBGI"), by its attorneys, hereby files its Reply Comments in the captioned matter.¹

SSBGI, and its operating subsidiaries are firmly committed to providing the maximum feasible service to the public through subsidiary broadcast stations. As a routine matter, SSBGI has sought to extend the service of its stations to the maximum number of persons feasible.

SSBGI is intimately familiar with the operation of the Commission's present Allocations and Applications systems. Based on this experience, SSBGI supports the general thrust of the Commission's proposed "one-step" procedure, as do generally those filing comments.

¹SSBGI is the Parent company of several entities holding Commission licenses for FM Broadcast Stations. SSBGI's operating subsidiaries have participated in numerous proceedings looking toward the upgrade of various stations. SSBGI is, therefore, well placed to file these *Reply Comments* and is a party in interest in this matter.

SSBGI in particular agrees with the *Comments* filed by Bromo Communications, Inc (hereinafter "Bromo"). SSBGI believes that Bromo's *Comments*, urging the Commission to include within the new procedure stations that would avail themselves of the "contour protection" provisions of section 73.215 of the Commissions Rules and Regulations, 47 C.F.R., are particularly well thought out. Presently, after an upgraded allotment is granted based on "full spacing," the licensee of the upgraded station often files an application for a construction permit under the contour protection provisions of section 73.215.

In a significant portion of upgrade proceedings, the Commission must make a determination between competing proposals for the same spectrum. Sometimes, after much work, the Commission staff has been able to fashion a revised allotment scheme that gives most, if not all, of the parties facilities of the class they sought. The Channel may be different, and the site may be restricted significantly differently, than the upgrade proponent envisioned. Other times, several proponents in a proceeding may be left unsatisfied.

Later, after those whose allotments were changed have filed their respective applications for construction permits to implement the authorized changes, it may turn out that some of the proposals that were not be accommodated because of the "reference site" specified, could have in fact also been accommodated because the "reference site" (the arbitrary spot from which full spacing in accord with the minimum distance spacing tables is achieved to all other protected facilities) was not the site at which the upgrading licensee desires to, or could, actually construct the

upgraded facility. If the Commission had before it the actual construction permit application, rather than a theoretical reference site, at the time it determines which among competing proposals would be granted, the Commission would be able in all cases to grant as many competing proposals as it now can, and could in many cases grant additional proposals that would have been foreclosed had theoretical reference sites been used.

In analyzing how to select among competing upgrade proposals, the Commission often requires studies of the areas to be served and the net population gains and losses of the various proposals. SSBGI believes that the Commission should, if it is to consider such data, consider the actual Construction Permit proposals and not the arbitrary--all to often never to be built--theoretical proposals.

There is no logical distinction in an application (one-step) upgrade system between those stations who can find a theoretical transmitter site that is fully spaced to all protected authorizations and applications and one that is not but complies with the contour protection provisions of the Rules. Any distinction would be arbitrary.

SSBGI notes that the National Association of Broadcasters is in favor of the one-step procedure generally. NAB's reluctance for the Commission to include in the new procedures those licenses that would avail themselves of the contour protection provisions of the Rules is founded not on any rational distinction between those able to demonstrate full spacing from a theoretical--but not to be used--site and those who would avail themselves of contour protection in the first instance, but rather on NAB's quibbling with the Commission permitting directional FM antennas.

The propriety of directional antennas is not before the Commission in this proceeding.

The *Comments* of Barry Skidelsky (Skidelsky) in reference to the Commission's "substantial compliance policy" for determining whether a proposed facility would adequately serve the community of license are likewise beyond the scope of this proceeding.

In Summary, SSBGI agrees with those parties commenting in favor of the Commission's basic proposal to amend its Rules to provide a more efficient system for existing FM stations to be upgraded to a higher class, on a mutually exclusive channel. After reviewing all of the *Comments*², SSBGI is convinced that the proposals advanced in the *Comments* of Bromo Communications best would: further the public interest that the Commission long has stated is inherent in upgrading FM stations; maximize the efficient use of the Commission's staff; minimize the costs and delays incurred by licensees hoping to be able to serve wider audiences; and, provide the requisite, but a singular, opportunity for other users or would be users of the spectrum to compete timely against a proposal.

SSBGI urges, therefore, that the Commission adopt a system that provides that:

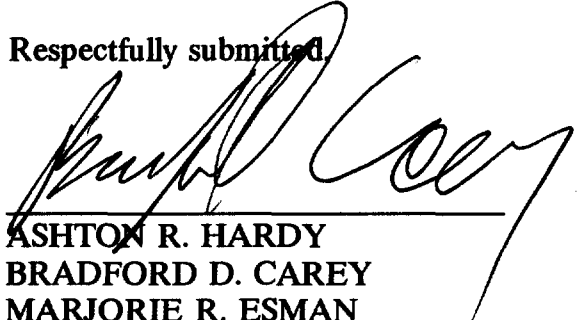
By application on the appropriate form, the licensee or permittee of an FM Broadcast Station operating on a non-reserved channel may request the Commission to authorize the construction of modified facilities on the same, or a mutually exclusive, channel of equal, greater or lesser classification. The application shall demonstrate compliance with: the appropriate table of minimum

²contained in the appropriate file at the Commission on October 30, 1992.

distance separations specified in Section 73.207 or the contour protection requirements specified in Section 73.215.

Upon construction of facilities authorized in a Construction Permit authorized pursuant to these provisions, and on the issuance of a (modified) license specifying such facilities, the FM Table of Allotments shall be, without further action by the Commission, thereby amended to specify the channel and class specified in the license.

Respectfully submitted,



ASHTON R. HARDY
BRADFORD D. CAREY
MARJORIE R. ESMAN
HARDY AND CAREY
111 Veterans Boulevard
Suite 255
Metairie, LA 70005
(504) 830-4646
Attorneys for Southern Starr
Broadcasting Group, Inc.

Dated: November 4, 1992

CERTIFICATE OF SERVICE

I, Brenda Cherry, a secretary for the Law Firm of Hardy and Carey, hereby certify that on this 4th day of November, 1992, I have caused to be served a copy of the foregoing document by first-class mail, postage pre-paid, on the following:


Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, VA 22553

Larry G. Fuss d/b/a *
Contemporary Communications and
Delta Radio, Inc.
Address not provided in Comments filed
by Contemporary Communications and
Delta Radio, Inc. and therefore SSBGI
was unable to serve them

Bromo Communications, Inc.
through Jefferson G. Brock and
Richard S. Graham, Jr.
P. O. Box M
1331 Ocean Boulevard, Suite 201
St. Simons Island, Georgia 31522

Barry Skidelsky
655 Madison Avenue
19th Floor
New York, New York 10021

Barry D. Umansky, Esq.
Deputy General Counsel
National Association of Broadcasters
1771 N Street, NW
Washington, D.C. 20036


Brenda Cherry

*Please Note